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IN THE

SUPREME COURT OF THE UNITED STATES

No. 669

OCTOBER TERM, 1963

HATTIEBURG BUILDING AND TRADES COUNCIL, ET AL.,

Petitioner,

versus

J. D. BROOME, d b a BROOME CONSTRUCTION AND MAINTENANCE COMPANY, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi entered in the above entitled case on May 13, 1963, suggestion of error having been overruled on July 9, 1963.

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi (Appendix D, *infra*, pp. 19-56) is reported in ——, Miss. ——, 153 So. 2d 695. The opinion of the chancery court (Appendix E, *infra*, pp. 57-63) is unreported.

JURISDICTION

The judgment of the Supreme Court of Mississippi (Appendix B, *infra*, p. 15) was entered on May 13, 1963. A suggestion of error was overruled on July 9, 1963 (Appendix C, *infra*, p. 17). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a state court may conclude that it has not been preempted of jurisdiction by the National Labor Relations Act and may therefore enjoin peaceful picketing directed against a construction employer engaged in interstate commerce or a business affecting interstate commerce on the ground that the picketing is conducted in violation of the state's "right to work" statute and therefore in the state court's view does not constitute a "labor dispute" under the National Labor Relations Act.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (61 Stat. 136, as amended, 29 U.S.C. 151, et seq.) are set forth in Appendix A, *infra*, pp. 11-13.

STATEMENT

The Hattiesburg Building and Trades Council AFL-CIO (hereinafter called the Union) is a labor organization consisting of craft and construction unions with jurisdiction in and around Hattiesburg, Mississippi. On or

about October 6, 1961, the Union began picketing J. D. Broome, d/b/a Broome Construction and Maintenance Company (hereinafter referred to as Broome), with a sign reading:

J. D. BROOME, CONST. CO.
UNFAIR
REFUSES TO BARGAIN
NO CONTRACT
H. B. T. C., AFL-CIO

Broome is engaged in industrial maintenance, contract maintenance and straight contracting work (R. 337) and was so engaged under contract to the Pontiac Eastern Oil Refinery (hereinafter referred to as Pontiac) when the strike began (R. 68-69). Pontiac has at all times material been engaged in the production of oil and gasoline products. The entire production of Pontiac is sold to the Gulf Oil Corporation (R. 67). These products eventually are moved in interstate commerce (R. 206-213). The National Labor Relations Board has taken jurisdiction over Pontiac (R. 68). Tens of thousands of barrels of products of Pontiac are delivered to Gulf monthly (R. 211).

Prior to October 6, 1961, representatives of the Union and affiliated crafts had talked with Broome about a Union contract. No contract was ever entered into between Broome and the Union. On October 6, 1961, as aforesaid, picketing began. The picketing at all times was peaceful (R. 70). Employees of three other contractors refused to cross the picket line (R. 75). Over half of the employees of Pontiac likewise refused to cross the picket

line (R. 76). In pleadings and statements on the record, Broome alleges facts and conclusions which, if true, would arguably bring the case under the secondary boycott provisions of the National Labor Relations Act (R. 7-9, 73, 78-79).

On October 6, the chancery court issued a temporary injunction enjoining all picketing of whatever nature directed against Broome (R. 12-15). By way of answer, motions and special defenses, defendants asserted *inter alia* that the state court was without jurisdiction because it involved a labor dispute affecting interstate commerce which was preempted by the National Labor Relations Act and fell within the exclusive jurisdiction of the National Labor Relations Board (R. 32, 36, 40, 41, 44). After a hearing, the chancery court on December 13, 1961, issued a final decree making the temporary injunction permanent (R. 51-54). The chancellor in his opinion (R. 45-50) holds that no labor dispute exists, that interstate commerce is not involved and that the action of the Union was in violation of the "right to work laws" of Mississippi. The permanent injunction is broad and sweeping and the Union, its affiliated crafts

> "* * * and all other persons whomsoever are hereby permanently enjoined and restrained from directly or indirectly: picketing the complainant, J. D. Broome, at any of his construction jobs or other places where he and his employees are performing work and particularly at the entrances to the refinery of Pontiac Eastern Corporation in Lamar County, Mississippi; threatening or intimidating the complainants or any other em-

ployees of J. D. Broome; threatening or committing acts of violence against the persons or property of the complainants or any other employees of J. D. Broome; interfering with the right of complainant, J. D. Broome, to carry on his business and to perform his contracts and the rights of the other complainants or other employees of J. D. Broome to work freely and without interference; coercing or attempting to coerce the complainant, J. D. Broome, or any of the other complainants or any other employees of J. D. Broome to require, compel or induce any of the employees of the said J. D. Broome to join any labor union or labor organization against their will; to coerce or attempt to coerce the said J. D. Broome into discharging any of his employees or to coerce or attempt to coerce the said J. D. Broome into employing only members of labor unions or labor organizations." (R. 53-54).

On an appeal to the Supreme Court of Mississippi, the defendants in their assignment of errors renewed their claim of Federal preemption and lack of state jurisdiction (R. 24-29). On May 13, 1963, the Supreme Court of Mississippi handed down its opinion and entered its judgment affirming the final decree of the chancery court. The Supreme Court of Mississippi held that the chancery court had jurisdiction, that there was no labor dispute, and that the picketing by the Union was in violation of Mississippi's "right to work laws." In affirming the final decree of the chancery court, the Supreme Court of Mississippi concluded that all picketing should be enjoined (R. 506-559).

A suggestion of error thereafter filed by the Union was overruled by the court on July 9, 1963.

REASONS FOR GRANTING THE WRIT

1. This Court has issued innumerable decisions stating that under the doctrine of preemption when an "activity is arguably within the compass of Sect. 7 or Sect. 8 of the Act, the State's jurisdiction is displaced" *Garmon v. San Diego Building Trades Council*, 359 U.S., 246. The Court below, in reaching the conclusion that it has reached, was not concerned as to whether or not the activity complained of was or was not arguably within the compass of Sections 7 or 8 of the Act. It was concerned primarily with whether or not the purpose of the Union was to force Broome to sign a union shop contract. As a result of its failure to apply the test, the decision reached is in direct conflict with controlling decisions of this Court.

That the Union's picketing in the instant case is arguably within the protection of Section 7 or the prohibition of Section 8 can hardly be denied. The employer in the instant case is, among other things, claiming that the Union picketed Broome at Pontiac in an effort to force Pontiac to force Broome to accede to the Union demand. This clearly sets out an allegation of a violation of Section 8(b)(4) of the Act. *NLRB v. Denver Building Council*, 341 U.S. 675; *International Brotherhood of Electrical Workers v. NLRB*, 341 U.S. 694. It therefore can be argued that if a charge had been filed by Broome, Pontiac, or any other person involved with the National Labor Relations Board, the Union's picketing might have been

found to be a violation of Section 8(b)(4) of the Act and brought before a Federal District Court for injunctive relief.

It also could have been determined by the Labor Board that the activity was protected under Section 7, in that the picketing was of the common situs variety complying with the conditions of *Moore Drydock Co.*, 92 NLRB 549. The picketing was limited to times when the situs of the dispute was located at the secondary employer's premises. It was limited to the time Broome was engaged in normal business at the common situs. The picketing was limited to places reasonably close to the common situs and the picketing disclosed clearly that the dispute was with Broome. If the latter thesis is correct, upon the filing of a charge with the Labor Board and after an investigation, the charge would have been dismissed as without merit. The peaceful picketing would not have been interfered with and its legitimate object might have been reached.

It is argued, however, that because the activities of the Union here enjoined were in violation of Mississippi's "right to work laws," the state court still has jurisdiction even if the matter could arguably come within the scope of Section 7 or Section 8 of the Act. This court early this year laid to rest this argument.

> "Upon such a record, we hold that this Court has appellate jurisdiction under Section 1257 and we reverse the judgment below as beyond the power of the Georgia courts. The allegations of the complaint, as well as the findings of the

> Georgia Supreme Court, made out at least an arguable violation of Section 8(b) of the National Labor Relations Act, 29 U.S.C. Section 158(b). Consequently, the state court had no jurisdiction to issue an injunction or to adjudicate this controversy, which lay within the exclusive powers of the National Labor Relations Board. Plumbers Union v. Door County, 359 U.S. 354, 359; San Diego Council v. Garmon, 359 U.S. 236, 244-245; Hotel Employees Union v. Sax Enterprises, Inc., 359 U.S. 270; Weber v. Anheuser-Buscher, Inc., 348 U.S. 468, 478, 481; Garner v. Teamsters Union, 346 U.S. 485, 489-491. Nor is the jurisdiction of the Georgia courts sustainable, as respondents urge, by reason of the Georgia right-to-work law and by Section 1(b) of the National Labor Relations Act, 29 U.S.C. Section 164(b). This precise connection has been previously considered and rejected by this Court. Local Union 429 v. Farnsworth and Chambers Co., 353 U.S. 969, reversing 201 Tenn. ——, 299 S.W. 2d , 39 LRRM 2540. The Georgia Supreme Court clearly exceeded its power in authorizing the issuance of a temporary injunction." *Local No. 438 Construction & General Laborers' Union, AFL-CIO v. S. J. Curry, et al., 371* U.S. 83, S.C. 531 (1963).

It is obvious that the decision of the Supreme Court of Mississippi in the instant case is directly contrary, not only to the *Garmon case*, but more particularly on its facts to the *Curry* case.

Under all the circumstances here, it seems clear that the decision of the Supreme Court of Mississippi is in direct contrast to and ignores decisions of this court con-

cerning preemption. Therefore, this court should grant the writ sought.

2. The Supreme Court of Mississippi did not pay heed to the holding of *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, wherein this Court held that state courts do not have the authority to issue blanket injunctions banning all picketing in the absence of a pattern. There certainly is no pattern here and if the state court did have jurisdiction to enjoin picketing in violation of its "right to work laws," it should have stopped there and not banned all picketing.

It is submitted that in as much as the court below has taken jurisdiction in an area clearly preempted by the Labor Board, "the ultimate reviewing power in this Court" should be available to petitioner. *Amalgamated Clothing Workers v. Richmond Bros. Co.*, 348 U.S. 511, 221.

It is submitted that the court below has so far departed from the preemption principle established by this court that summary reversal might be called for in order to avoid further delay. Such a practice has been followed by this court in other cases. *General Drivers, Warehousemen and Helpers Local No. 89, et al. v. American Tobacco Co., Inc.*, 348 U.S. 978; *Retail Clerks Local 560 v. J. J. Newberry Co.*, 352 U.S. 987; *Teamsters v. Kerrigan Iron Works, Inc.*, 353 U.S. 968; *International Brotherhood of Electrical Workers Local No. 429 v. Farnsworth & Chambers*, 353 U.S. 969.

CONCLUSION

For the foregoing reasons, it is urged that this Court issue a writ of certiorari to review the decision below.

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December 6, 1963

APPENDIX A

The pertinent provisions of the National Labor Relations Act (61 Stat. 136, as amended, 29 U.S.C. 151, et seq.) are as follows:

Definitions

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who

has not obtained any other regular and substantially equivalent employment, * * *

* * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * *

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

. . . .

APPENDIX B

JUDGMENT OF THE SUPREME COURT OF MISSISSIPPI

Monday, May 13th, 1963, Court Sitting: : : : : :

No. 42,504

HATTIESBURG BUILDING & TRADES COUNCIL, ET AL.

versus

J. D. BROOME, ET AL.

This cause having been submitted at a former Term of this Court on the record herein from the Chancery Court of Forrest County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge and decree that the decree of the said Chancery Court rendered in this cause on the 13th day of December 1961-be and the same is hereby affirmed. It is further ordered and adjudged that the appellees do have and recover of and from the appellants and United Benefit & Fire Insurance Company, surety on the appeal bond herein, all of the costs of this appeal to be taxed, for which let proper process issue.

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APPENDIX C

ORDER OF SUPREME COURT OF MISSISSIPPI OVERRULING SUGGESTION OF ERROR

Tuesday, July 9, 1963, Court Sitting: : : : : :

No. 42,504

HATTIESBURG BUILDING & TRADES COUNCIL, ET AL.

versus

J. D. BROOME, d b a BROOME CONSTRUCTION AND MAINTENANCE COMPANY, ET AL.

This cause this day came on to be heard on the suggestion of error filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

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APPENDIX D

OPINION OF THE SUPREME COURT OF MISSISSIPPI

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,504

HATTIESBURG BUILDING AND TRADES COUNCIL, ET AL.

versus

J. D. BROOME, d b a BROOME CONSTRUCTION AND MAINTENANCE COMPANY, ET AL.

LEE, PRESIDING JUSTICE:

J. D. Broome, doing business as Broome Contracting and Maintenance Company, and ten others, being employees of J. D. Broome, filed their bill of complaint against Hattiesburg Building and Trades Council, a labor organization, whose place of business was in Forrest County, Mississippi, and six other local unions, as de-

scribed in the bill, and Cecil T. Harvison and F. D. Conn, individuals.

The complainants, other than Broome, were men with families, and it was necessary for them to work in order to support themselves and their dependents. They charged that their right to work and earn such support had been interfered with by the defendants and was being interfered with and threatened at the time of the filing of the bill, by the unlawful acts of the defendants as described in their bill.

Substantial allegations of the bill were to the following effect: J. D. Broome was in the industrial maintenance business, and, among other constructions being performed by him, he was doing work for Pontiac Eastern Corporation at its Black Creek Refinery in Lamar County, Mississippi, in an extensive clean-up and repair operation, commonly called a "turn around"; that several hundred employees of various contractors were also engaged in such work, and that it was imperative that the work should be done expeditiously; that the defendants at six o'clock, October 6, 1961, unlawfully and in violation of the rights of the complainants, placed picket lines at all plant entrances to the refinery; that pickets were placed at the said entrances carrying signs which falsely and slanderously purported to advise the public that Broome was unfair and refused to bargain with Hattiesburg Building and Trades Council; that the purpose, in so doing, was to force Broome unlawfully to enter into some kind of a contract which, in operation and practice, would require that his employees belong to labor unions against their will,

and that his nonunion employees would be discharged unless they joined a labor union; that the complainants did not belong to a labor union and did not wish to belong, and that virtually all of Broome's employees were similarly situated; that this action was for the purpose of forcing a shutdown of work at the refinery and placing pressure on Broome and the individual complainants to coerce them, against their will, into becoming members of a labor organization, all in violation of their rights and in violation of the statutes and Constitution of the State of Mississippi and the public policy of the State; that, following the placing of pickets, great congestion existed and danger to the traveling public and to individuals was greatly increased; that Broome, in past contracts had been threatened with violence and intimidated by Hattiesburg Building and Trades Council, and affiliated unions, in an effort to force him to sign an unlawful contract, as aforesaid, and during the construction of the Pontiac Eastern Corporation plant, when acts of violence were committed by defendants F. D. Conn and the defendant, Plumbing and Pipe Fitters Union; and that, in connection with unlawful picketing, Broome received threats of sabotage and damage to his property unless the demands were met.

It was further charged that there was no labor dispute whatsoever between Broome and his employees, and that the defendants did not represent his employees and that the complaining employees did not desire to be represented by them; that neither was there any labor dispute between Pontiac Eastern Corporation and its employees; that the unlawful acts of the defendant had caused several hundred employees of Pontiac Eastern

Corporation and other contractors engaged in the work to leave the premises, or refuse to enter the same, and virtually brought about the shutdown of the work; and that this was causing damage and loss to the citizens of Lamar and Forrest Counties and other citizens in wages in the sum of several thousand dollars each day and the complainants were being injured and will be irreparably damaged unless the court would immediately enjoin and restrain the same.

There was a prayer for the grant of a temporary injunction and for the prevention of the acts and wrongs complained of.

The petition was sworn to by the parties and filed.

A temporary injunction was ordered to be issued by the circuit judge of the 15th Circuit Court District of the State on the 6th day of October 1961 upon the giving of a good and sufficient bond in the sum of $1,500. Pursuant thereto, a writ of injunction was issued out of the Chancery Court of Forrest County, Mississippi, on the same date.

Thereafter a motion to dissolve was duly filed on October 24, 1961. Subsequently an answer was filed by the defendants, denying the material allegations of the bill and also setting up affirmative defenses, which, in effect, stated that the bill of complaint upon the face, alleged a controversy, or labor dispute, within the meaning of the National Labor Relations Act, 29 U.S.C.A. § 151, and that the court was without jurisdiction.

The court heard the evidence, pro and con.

James B. Duren, Refinery Manager of Pontiac Eastern Corporation, situated at Black Creek, Mississippi, testified that the company receives its crude oil only in the State of Mississippi. Its product had been, and was being, sold to Gulf Oil Corporation either at its refinery site or at its storage facilities in the Town of Collins, Mississippi. Thereafter, the purchaser could place the same in the Plantation pipelines which run through Collins from Baton Rouge, Louisiana to other states. The company had a collective bargaining contract with a labor union. The refinery has an annual shutdown, known as a "turn around," taking about fourteen days, which consists of a general repair of all parts in the plant. At that time there were longer schedules and work weeks. Outside persons were also employed on the job. October 6, 1961, was the crucial date in this operation. It was at this time that pickets showed upon on the job, the purpose being to keep union employees away. On the west gate there was a sign reading "Entrance for Broome Contracting and Maintenance Company only, all others enter east entrance." The sign on the east gate read "Broome Contracting and Maintenance Company enter west gate only, all others enter here." In this case the picket signs stated "J. D. Broome Construction unfair, refuses to bargain, no contract. H.B.T.C. A.F.L.-CIO.", and were placed at both the west gate and the east gate entrance roads. The pickets were in the highway. When the picketing was instituted at the main gate, it prevented workmen of three other companies, Calalytic Construction, Hemby Electric, and Delta Tank, from working. Of the 440 people normally employed, 252

refused to cross the picket line. There was no dispute of any kind between Pontiac, or Calalytic, or Delta Tank, or Hemby Electric, or Broome, with their employees. The witness was aware that Hattiesburg Building and Trades Council was seeking to negotiate with Broome Contracting and Maintenance Company; but, in a telephone conversation, Mr. Harvison gave assurance that there was no likelihood of any dispute. It was the opinion of the witness that pickets were placed at the east gate, where all workers except Broome's were to enter, was to force Pontiac to bring pressure on Broome to continue negotiations with Hattiesburg Building and Trades Council. That morning there was a long line of automobiles in each direction from the building on both sides of the street. Most of the union employees refused to cross the picket line. The witness understood that union members are subject to discipline if they cross picket lines placed by the union. The loss on payroll for October 6th was $10,000 and for October 7th was $4,800.

J. D. Broome, who lived at Hattiesburg, Mississippi, testified that he was engaged in industrial and contract maintenance and contract work in Mississippi. He had been a member of a labor union from 1940 to 1951. Some of his employees at the time of the trial were union men and some were nonunion. His policy has been and is, that he is not concerned with the political or religious beliefs of his employees. He does try to see that local people get first preference at work regardless of whether members or nonmembers of a labor organization. In other words, one does not have to belong to or continue as a union man to get employment with him. Neither does he require him to be a nonunion man in order to do so. He was familiar with

the organization over which Cecil Harvison presided, namely, the Hattiesburg Building and Trades Council. This experience began in 1958 when a Mr. Hannigan was first in charge. The demand upon him at that time was that some of his employees, namely, Slade, McCann, Boone, Lowery and Daugherty should be fired immediately or they would "get me one way or the other." Their next requirement was that he use strictly union people—he was to contact the business agent, who would supply the needs. The pressure from Harvison was of the same type although he was more diplomatic and had "a smiling way" about it. His pet expresison was that you "get right with us." He met with Harvison and other representatives of labor on September 23, 1961. At that time Harvison told him, in explanation of the hiring hall procedure, "We hope that you will encourage" the men "to get right with us within two weeks or a short period of time."

This witness was familiar with the hiring hall procedure as it was exclusive in the labor union to which he belonged. It means simply this: An employer contacts the labor organization with which he has an agreement, for all of his personnel, and all of his personnel must belong to the labor union or they do not work. This was the message that these representatives gave him. Defendants Touchstone, Word, Stringer, F. L. Purvis, Harry Beakes, and Cecil Harvison were all present at the time. They told him that they had allowed him to grow and that it was time for him "to get right" with them. But all of the conversation was about his signing the exclusive hiring hall procedure. He asked for a copy of the contracts, but, under various excuses, they never did grant his request and he had never seen them. About 9:30 on the night of

October 4th, he received a telegram from Harvison, President of the Council. It informed him that, if the witness did not enter into a contract by six o'clock on the morning of October 6th, they were going to act and they hoped that a strike would not be necessary.

When he got out to the plant the next day, Touchstone, Stringer and F. L. Purvis were all there. His offered testimony about threats over the telephone by unknown persons was excluded. When he filed the bill of complaint, he did so in good faith, believing that violence would erupt on the picket line and that injury was imminent; and at the time of testifying, he was more strongly of that belief than at the time of the filing of the suit. There was no labor dispute of any kind between him and his employees or between any of the other organizations and their employees about the work being done at that time. The only question was whether or not the witness would submit to the demands of the defendants.

On cross-examination, the witness emphasized that the labor representatives were trying to get him to fire employees who were working for him at that time and that this was the main thing that they had hounded him about; and that those people had to go before any discussion could be made; that Harvison wanted him to sign an exclusive hiring hall agreement whereby the unions would furnish all of his employees that they meant for him to fire everybody else when they expressed the hope that "he would encourage them to see things their way within a couple of weeks"; and that there was no question of wages and working conditions. Harvison, Touchstone, Wood,

Stringer, and all of them had told him positively that there was no problem of labor dispute or money. He had not refused to bargain on any other contract because he had never seen one. He therefore justly accused the defendants of interfering with the rights of his employees and other men to work on his job by demanding that he sign an exclusive hiring hall procedure and give his present employees two weeks to get right with the union.

Leonard L. Slade, another complainant and employee of Broome, testified that he had belonged to a labor union nearly twenty-one years but did not belong to one at the time of the trial, and did not desire to do so. He said "We did not want any union to represent us at Broome's." He was also familiar with the hiring hall procedure, under which the business agent sends the union men first and nonunion men only when there are no other union men, and they, in turn, put up the requisite fee. He was present at Broome's conference with the Council Members on September 23rd, and said that the labor officials "did not come up" with anything definite except that they wanted Broome to sign an agreement "to get right". That was the main thing. They said they would be the ones to do the hiring and send men to do the job. Broome would call them, if he needed men, and they would supply the men. If he did not sign an agreement to "get right", they would take other steps. There was no labor dispute whatever between Broome and his employees at the time.

J. H. McCann, an employee of Broome since 1958, testified that he belonged to a union for fifteen years, but does not belong to one now and does not desire to do so.

He severed his connection about four years ago. He was familiar with the policies and philosophies of unions. The hiring hall procedure meant that a person applying for a job presents his union book, and if he is in good standing, he is given a referral card to the person who has asked for employees, and without that card he cannot get work. The obligation of the business manager is to negotiate contracts. If business is slack and a member is in arrears, if he is given work, he must pay up his dues as he works. Broome's employees did not wish to be represented by any local union.

Aaron Clempts, an employee of Broome, had never been a member of a labor union and does not want to be a member. There was no dispute of any kind between Broome and his employees. All they wanted was to be left alone.

Several of the defendants were called as witnesses on their side. While some of their answers, on direct, were susceptible of the denial of an attempt to obtain a labor monopoly, without regard to the wishes of the workers, those potential denials were then equivocated by their explanations. For instance, Cecil T. Harvison, President of the Hattiesburg Building and Trades Council, and Business Manager of the Plumbers and Pipe Fitters Union, testified that when Broome asked if his employees would be required to join a union, he replied "No, but we would appreciate your encouraging them to join." He admitted his responsibility in connection with the pickets, the sending of the telegram and the instructions to the persons to carry the picket signs. Besides, but for the injunction, he would have kept the pickets walking. When pinned

down, on cross-examination, to what the purposes of his negotiations with Broome were, he said: "Well, the purpose of the negotiations with Mr. Broome was to try to get him to enter into an agreement with the local unions whereby they would supply him with qualified craftsmen to perform the type of work that he does." The purpose of the picket line was to advertise that Broome had no agreement and had refused to cooperate. He explained that the Council was an association of the organized craft in that area. He named the seven particular unions which are involved and said that the Council decides when a picket line is to be used, and the pickets are agents of the Council. He admitted that, in the past, he had worked for Broome and that he was a "nice guy" to work for. He also admitted that what he was anxious to obtain was the hiring hall procedure by which he or the local union would furnish to Broome the workmen for that particular type of work. In other words, Broome would call each local union, and the union in turn would furnish him the men and supply his workmen. They were asking him to enter into that kind of agreement. That is what Broome declined to do and refused to discuss with them. Subsequently this witness, when recalled by defense counsel for the evident purpose of modifying some of his damaging admissions, tried to say that he was not requiring Broome's workers to join the union, but he would appreciate Broome's "encouraging" them to join. He then admitted that this so-called "encouragement" would come from their employer, who paid their wages, who assigned them to their jobs, who would promote them if they were worthy of promotion, and who could terminate their employment if he desired. He then admitted that his salary, as business manager,

was paid from the initiation fees of $200 and dues of $10 per month.

Herman H. Wise, Business Manager of the Boilermakers and a defendant, admitted that he knew of no dispute between Broome and any of his employees and his participation in the vote to put up the picket line.

Jim Daniel Touchstone, Business Agent of the Carpenters Union, and a defendant, testified that the words on the picket sign were for the purpose of publicizing the fact that Broome did not have a contract with the Council.

Claude William Faulk, Asst. Business representative of the Engineers, testified that what he wanted Broome to do was to talk to him about a labor policy so that the witness could furnish him some employees. He said that Broome was unfair because he would not hire his men through the local union. What he wanted Broome to do was to let him furnish the people, tell him what kind of people he wanted, and let him furnish those employees.

J. O. Word, Business Manager of Electrical Local 1575 and a defendant, testified that he attended the meeting of the Council when the question of putting a picket line on Broome was acted upon. His desire was that his local would furnish Broome with his electrical employees. He wanted Broome to use his men, to show some qualifications as to being an electrical, licensed contractor. He wanted him to become qualified so that he could employ the members of his union. If Broome used these men, he would expect him to comply with the rules; and that building and trades is organized labor. If a member in his

union fits the job that is need, as business agent, he sends that member. Only when a qualified union man is not available does he send a nonunion man. The witness said that he did want Broome "to get right." By "get right", he meant "get the electrical contract and start using my men under our working agreement." Again he said "I wanted him to use our men * * * to sign our contract, he would abide by our contract and our rules. Unless he did that, he would not be right."

Homer L. Stringer, Business Agent of International Hod Carrier and Common Labor Union and a defendant, testified that the Council had been trying to negotiate a contract with Broome but he would not go so far as to agree to anything but asked for two or three weeks in which to study it. He participated in the September 23rd meeting on the occasion of the strike vote. He was with a man that "carried the picket line." What he told Broome was that he would like to get his members that he already had in the union and he did not say that he was going to discriminate or enforce anything. He said that Broome was "unfair to me" when he would not agree to hire his men by calling H. F. Stringer. "We wanted some of our people to work for him and, if others would not belong to the union," we wanted to act as agent to qualify the men, union or no union.

There was no actual violence. All witnesses agreed that good union men will not cross a union picket line, and that a member can be disciplined for that offense. The salaries of the business agents of the unions were paid from initiation fees and dues.

At the conclusion of the evidence, the court made the following written findings and conclusions of law:

"A few of J. D. Broome's employees belong to labor unions, but most of his employees do not. These nonunion employees of Broome do not want to belong to labor unions and particularly do not wish to belong to any of the defendant unions. They wish to be left alone by the defendants, and desire to be free from interference and coercion by the defendants. Complainant Broome has followed and now follows a strict policy of not requiring either membership or nonmembership in labor unions by his employees and of avoiding any interference whatsoever with the freedom of choice of his employees in this regard, and he has consistently and frequently advised his employees that membership or nonmembership in any labor union was a matter for their own personal free choice.

"No dispute, controversy or grievance of any kind exists between J. D. Broome, on the one hand, and any of his employees, on the other hand, relating to wages, hours of work, working conditions, or any other matter relating to employment, or otherwise.

"The defendant labor unions and their respective representatives demanded that the complainant, J. D. Broome, enter into agreements with them which in actual operation, practice and effect would require that Broome employ only members of labor unions; that he employ all of his employees from and through the business agents of the defendant labor unions and that he give said labor unions an employment monopoly with reference to employees of Broome; that he force and coerce his nonunion employees

to join the defendant unions against their wishes; that he discharge nonunion employees; and that he otherwise interfere with his employees' right of free choice with respect to membership or non-membership in labor unions.

"The defendants and each of them did unlawfully conspire to place picket lines at entrances to places where the complainant, J. D. Broome, was performing work and to injure the business of the complainant Broome and to injure and interfere with the rights of the complainants and other employees of Broome and did act in concert with each other, individually and collectively, and as representatives of their respective unions, for the unlawful purposes set forth in these findings.

"In furtherance of the conspiracy and as a result thereof, picket lines were placed by defendants on all plant entrances to Pontiac Eastern Corporation's Black Creek Refinery in Lamar County, Mississippi, where Broome was then performing some work, on October 6, 1961, and as an immediate and direct result, work at the refinery came to a virtual standstill, causing great loss and damage, and said pickets remained until removed by the temporary injunction issued herein on October 6, 1961. Said pickets would have remained and continued picketing at said locations, and elsewhere, except for the issuance of said temporary injunction. Although several defendants testified that their purpose in picketing was to advertise to the general public that they had some dispute with Broome, it is obvious from the evidence, and the court so finds, that in truth the real purpose of the aforesaid picketing was to bring pressure to bear on the complainant.

J. B. Broome, to force Broome in turn to coerce his employees into joining labor unions against their will, and to force Broome to submit to the demands of the defendants * * *.

"It is the public policy of the State of Mississippi that the right of a person to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization and that any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby which membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is an illegal combination or conspiracy and is against such public policy.

"The actions and activities of the defendants were for unlawful purposes, contrary to the public policy, statutes and Constitution of the State of Mississippi, and in violation of the rights of the complainants."

The decree was in accordance with the above findings. It was agreed by the parties that the hearing would be treated as final, and from the decree entered, the defendants appealed.

The appellants assigned and have argued two points on this appeal, namely, the bill of complaint alleged upon its face a controversy or labor dispute within the meaning of the National Labor Relations Act, 29 U.S.C.A. § 151,

and the trial court was without jurisdiction to enjoin the defendants from all picketing, as Congress has preempted this held by the passage of the National Labor Relations Act as amended i 1947.

The appellants have cited a large number of Federal cases which have dealt with the extent of Federal preemption in the field of labor relations in business affecting interstate commerce.

This Court, in one of its own cases, Fishermen & Allied Workers, etc. v. Quaker Oats Co., 235 Miss. 401, 106 So.2d 144, 109 So.2d 321 (1959), in recognition of Federal preemption in this field, following the rule in Garner v. Teamsters Union, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228, and other Federal authorities, held that the State court in that instance, was without jurisdiction, dissolved the injunction, and dismissed the bill of complaint. Moreover this Court, in another of its own cases, International Woodworkers, etc. v. Fair Lumber Co., 232 Miss. 401, 99 So.2d 452, 100 So.2d 606, upheld the power of the trial court to suppress violence, but, in recognition of and following decisions of, the Supreme Court of the United States, especially Youngdahl v. Rainfair, Inc., 355 U.S. 131, 78 S.Ct. 206, 2 L.Ed. 2d 151, held that while the State courts can regulate peaceful picketing, they cannot prohibit it. To that end, mass picketing, because it had been attended with violence, was enjoined; but the union was allowed to place two pickets at each entrance of the plant.

It was alleged and proved, and the chancellor found as a fact, that there was no dispute, controversy or grievance of any kind between Broome and any of his employees

with reference to wages, hours, working conditions, or other matters of employment. It was likewise alleged, proved, and found as a fact by the chancellor, that the defendants demanded that Broome enter into agreements with them whereby he would employ only members of labor unions through their business agents and thus give them a labor monopoly, so far as his employees were concerned and that he would coerce his nonunion employees into joining the unions, or discharge them and interfere with the free choice of his employees as to membership or nonmembership in labor unions.

Enough of the evidence has been referred to in the statement of facts, to show that an employment monopoly of Broome's employees was the whole purpose of the defendants' demands. "To get right with them" entailed the firing of his nonunion men unless they would become members within a specified time; and, after this had been done, the business managers of the unions would then furnish his employees. This, of course, meant that Broome would nevermore be able to hire a nonunion man for any purpose unless, perchance, it might be impossible to secure a union man for that purpose. The very sign itself, carried by the pickets, namely, "J. D. Broome Construction unfair, refuses to bargain, no contract. H.B.T.C. A.F.L.-C.I.O.", proclaimed that Broome was unfair because he refused to bargain for a contract. And what was that contract? That he would "get right" with them in complying with the demands for an absolute labor monopoly. Carrying out their previous threats, and as a reprisal for Broome's refusal of those demands, they placed pickets at both entrances

to the refinery at a time when the repair work was at a crucial stage, thus expecting to bring him to his knees.

[1] This Court has repeatedly held that a chancellor's finding of the facts is reviewable on appeal only when manifestly wrong. Griffith's Miss.Chancery Practice, Sec. 674, pp. 741-742 catalogues literally dozens of cases reaffirming this rule. The author shows that the rationale for the rule derives from the constitutional right of all litigants to have their issues of fact submitted to and passed upon by the jury or chancellor, according to the ordinary practices of the forum in which the case is for trial, and the like right of the successful party not to have his cause reviewed except upon the record there made and, in addition, not reversed except upon that record, and then only, unless it is clearly shown to be erroneous. He also points out another compelling reason at pages 742-743, to-wit: "The opportunities afforded to the trial court are far better for arriving at correct conclusions and findings upon all questions of fact. Of this matter our supreme court has said:—'Here we have nothing but the naked record before us; there, in most cases, the parties themselves are in the presence of the court and testifying. The manner of testifying, and their appearance upon the witness stand, and many other things, are influential in determining the triers of fact'; or as said in another case: the decision of the chancellor where the evidence is conflicting will not be disturbed on appeal, since he is better able to determine the truth of the matter than the appellate court."

[2] From the reading of the evidence and its considered study, the court is of the opinion not only that the

finding of facts in this instance is not manifestly wrong, but also that the same is manifestly right, and that no other reasonable or rational conclusion could have been reached.

[3] If Broome had complied with these demands and had entered into a contract with the defendants to that effect, an illegal combination and conspiracy to deny and abridge the right of ten of the complainants and other persons to work in this State would have been formed and entered into against the public policy of this State, and in violation of Chap. 249, Laws of 1954, Sec. 6984.5, Code of 1942, Rec., and Sec. 198-A, Art. 7 of the Mississippi Constitution.

Chap. 249, Laws of 1954, Sec. 6984.5, Code of 1942, Rec., provides as follows: "Denial or abridgement of work. —(a) It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

"(b) Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy.

"(c) No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

"(d) No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

"(e) No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

"(f) Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such actual damages as he may have sustained by reason of such denial or deprivation of employment.

"(g) The provisions of this section shall not apply to any lawful contract in force at the time of the passage of this act, but they shall apply to all contracts thereafter entered into and to any renewal or extension of any existing contract thereafter occurring.

"(h) The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.

"If any clause, sentence, paragraph, or part of this act, or the application thereof to any person or circumstances, shall, for any reason, be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, or the application thereof to any other person or circumstances, but such invalidity shall be confined in its operation to the portion of the act directly involved in the controversy in which judgment shall have been rendered or to the person or circumstances so involved, as the case may be."

Section 198-A, Amendment to Art. 7 of the Constitution of 1890, was proposed by Chapter 512, Laws of 1960, the Amendment was ratified by the electorate of the State at a special election held June 7, 1960, and was inserted into the Constitution by due proclamation of the Secretary of State on June 22, 1960, as provided by Section 273 of the Constitution as amended. The amendment was held to have been validly adopted by this Court in Barnes v. Ladner, 241 Miss. 606, 131 So.2d 458 (June 12, 1961.) It provides:

"It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly

in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization. Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such actual damages as he may have sustained by reason of such denial or deprivation of employment.

"The provisions of this section shall not apply to any lawful contract in force on the effective date of this section, but they shall apply to all contracts thereafter entered into and to any renewal or extension of an existing contract thereafter occurring. The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act."

[4] The Court is concerned with the object of this picketing. It was for an illegal purpose and in violation of the Constitution and Statutes of this State in reference

to the right of persons to work in this State. The Court is mindful of the fact that, in Thornhill v. State of Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940), the Supreme Court of the United States went a long way in justification of picketing as an exercise of free speech. The reason, assigned for the sweeping statements therein, was that the effect of the Alabama criminal statute "comprehends every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer." But the opinion left the door open for State regulation when it said: "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants," citing Mr. Justice Brandeis in Duplex Printing Press Co. v. Deering, 254 U.S. 443, at 488, 41 S.Ct. 172, 65 L.Ed. 349, 365, 16 A.L.R. 196.

Subsequently, however, the opinion came down in Giboney, et al. v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949). Appellants, as members and officers of a labor union, in an effort to bring all retailers of ice into the union, and having previously obtained an agreement from all other Kansas City wholesale ice distributors that they would not sell to nonunion peddlers, stationed pickets at Empire's place of business to bring it around to their view when it adamantly refused to make a like agreement. The state courts of Missouri, having enjoined such picketing because the attempted com-

bination was held to be a conspiracy in restraint of trade, and a felony under Missouri law, Giboney and others appealed to the Supreme Court of the United States, contending that they had the right, under the First and Fourteenth Amendments to picket because there was "a labor dispute existing" between the parties and "the picketers publicized only the truthful information that appellee was 'selling ice to peddlers who are not members of the said defendant union.'" Mr. Justice Black, in a clear and apparently unanswerable opinion, without a dissent, held "That states have constitutional power to prohibit competing dealers and their aiders and abettors from combining to restrain freedom of trade is beyond question." He pointed out, in effect, that a labor union enjoys no immunity from the violation of a valid criminal statute by reason of the guaranty of freedom of speech and press. In response to the contention that they were publicizing a fact, he pointed out that the record did "not permit this publicizing to be treated in isolation. For according to the pleadings, the evidence, the findings, and the argument of appellants, the sole immediate object of the publicizing adjacent to the premises of Empire * * * was to compel Empire to agree to stop selling ice to nonunion peddlers." Explaining that the Court had already in Thornhill v. Alabama, supra, recognized the power of a State to set the limits of permissible contest open to industrial combatants in its citation of Justice Brandeis in the Duplex Printing case, supra, Justice Black then quoted the following language from the opinion in Duplex Printing, to-wit: "The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to de-

termine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."

The opinion justified the restraint of picketing, under the circumstances in that case, because it was "done in violation of Missouri's valid law for the sole immediate purpose of continuing a violation of law." Actually "They were exercising their economic power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade." The author cited Bakery & Pastry Drivers & Helpers, I. B. T. v. Wohl, 315 U.S. 769, 62 S.Ct. 816, 86 L.Ed. 1178, which said in part: "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation."

In Hughes, et al. v. Superior Court of State of California, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985, (1950), the State courts had enjoined the picketing of a store in order to compel submission of the owner to a demand for employment of Negro clerks in proportion to the number of its then Negro customers. The appellants were adjudged guilty of contempt for violation of the injunction. They ap-

pealed, claiming that the injunction was invalid because it infringed their constitutional right of free speech. Mr. Justice Frankfurter, writing the opinion, pointed out that, while picketing is a mode of communication, it is inseparably something more and different, and that a state is not required to tolerate even peaceful picketing by an individual in all places and all circumstances, citing Bakery, etc. v. Wohl, supra, and other cases. Since the State had, through its courts, expressed hostility to discrimination in employment on the basis of color, "It is not for this Court to deny to California that choice among all 'the various weapons in the armory of the law.'" Consequently the judgment was affirmed. There was no dissent. Justices Black and Minton were of the opinion that the case was controlled by the Giboney case, supra. Mr. Justice Reed was of the opinion that the California court held that the pickets sought discrimination in favor of the Negro race, and that this was unlawful in that state, and picketing should be barred on that account, in accordance with the Giboney case.

In Building Service Emp. Intern. Union v. Gazzam, 339 U.S. 532, 70 S.Ct. 784, 94 L.Ed. 1045 (1950), the representatives of the unions called upon Gazzam to sign a contract which would require his fifteen employees at the Enetai Inn to join their union. He told them that this was a matter for his employees to decide. After discussions, when eleven voted, nine of them voted against joining, one was undecided, and the other, the bell boy, whose membership the union did not desire anyway, voted to join. As a result, Gazzam was notified that he had been placed on the "We do not patronize" list, and two pickets began walking

in front of the hotel with signs reading "Enetai Inn—unfair to organized labor." The union finally offered a contract under which the present employees would not be required to join in order to continue their employment; but those hired in the future would be required to join within fifteen days or be discharged. The Court said that this latter offer was the same as the first in slow motion.

Observing that picketing is more than free speech, the opinion, in proof that it had not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity, cited Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, 61 S.Ct. 532, 85 L.Ed. 836, 132 A.L.R. 1200; Hotel & Restaurant Employees International Alliance v. Wisconsin Employment Relations Board, 315 U.S. 437, 62 S.Ct. 706, 86 L.Ed. 946; Carpenters & Joiners Union of America v. Ritter's Cafe, 315 U.S. 722, 62 S.Ct. 807, 86 L.Ed. 1143; and Giboney v. Empire Storage & Ice Co., supra.

Because of the public policy of the State, enunciated by legislative enactment, as construed by the Supreme Court of the State, the opinion said that "it is clear that workers * * * shall be free from the coercion, interference, or restraint of employers of labor in the designation of their representatives for colective bargaining", and that the picketing in this instance was "an attempt to induce a transgression of this policy." It was held that Giboney v. Empire Storage & Ice Co., supra, controlled, pointing out that, although in Giboney the law against unlawful picketing provided for criminal sanctions, that provision is not requisite as "Whether to impose criminal sanctions

in connection with a given policy is itself a question of policy." Justice Douglas took no part; but all other Justices concurred, Justice Black expressing the opinion that it was controlled by the principles announced in Giboney.

In Local Union No. 10, etc., A. F. of L. v. Graham, 345 U.S. 192, 73 S.Ct. 585, 97 L.Ed. 946 (1952), the Grahams had a contract with the City of Richmond to build a school and had awarded contracts to various subcontractors, some of whom employed only union labor, while others employed both union and nonunion labor. As the work progressed, certain of the defendants requested that all nonunion labor be laid off and said, if that was not done, every effort would be made to prevent any union labor to be employed on the project. To that end, they picketed the project with the sign, "This is not a Union Job." As a result, the union members quit and the project was slowed to a standstill. It was charged that this was a violation of the Virginia Right to Work Statute, and that the purpose was to prevent nonunion men from working on the project. The trial court made a finding of fact in accordance with the allegations of the bill and issued the injunction, which action, on appeal, was found to be plainly right by the Supreme Court of Appeals of Virginia. The opinion held that the Commonwealth of Virginia, consistent with the Constitution of the United States, had the right and power to enjoin picketing when it was carried on for purposes in conflict with the State's Right to Work Statute; and that the record justified the findings made by the State courts that the picketing was for such a purpose. The Virginia Statutes, Chap. 2, Acts of Ex. Session of 1947, Secs. 40-74 inclusive, were set out in the footnotes.

and the court decisions, upholding them, were cited. The opinion called attention specifically to the testimony of the respondent Graham and his general manager on the factual question. Finally the opinion stated:

"Based upon the findings of the trial court, we have a case in which picketing was undertaken and carried on with at least one of its substantial purposes in conflict with the declared policy of Virginia. The immediate results of the picketing demonstrated its potential effectiveness, unless enjoined, as a practical means of putting pressure on the general contractor to eliminate from further participation all nonunion men or all subcontractors employing nonunion men on the project.

"Assuming the above conclusions to have been established, petitioners still contend that the injunction in this case was inconsistent with the Fourteenth Amendment to the Constitution of the United States. On the reasoning and authority of our recent decisions, we reaffirm our position to the contrary. Building Service [Employees International Union] v. Gazzam, 339 U.S. 532, 70 S.Ct. 784, 94 L.Ed. 1045; International Brotherhood of Teamsters [C. & W. H.] Union v. Hanke, 339 U.S. 470, 70 S.Ct. 773, 94 L.Ed. 995 [13 A.L.R.2d 631]; Hughes v. Superior Court [of California], 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985; Giboney v. Empire Storage [& Ice] Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834; Thomas v. Collins, 323 U.S. 516, 537-538, and 543-544 (concurring opinion), 65 S.Ct. 315, 325-326, 328-329, 89 L.Ed. 430 [444, 445, 447, 448]; Bakery & Pastry Drivers Local [& Helpers, I. B. T.] v. Wohl, 315 U.S. 769, 776-777 (concurring opinion), 62 S.Ct. 816,

819-820, 86 L.Ed. 1178 [1184, 1185]; Carpenters [& J.] Union v. Ritter's Cafe 315 U.S. 722, 62 S.Ct. 807, 86 L.Ed. 1143; Carlson v. People of State of California, 310 U.S. 106, 60 S.Ct. 746, 84 L.Ed. 1104; Thornhill v. State of Alabama, 310 U.S. 88, 103-104, 60 S.Ct. 736, 744-745, 84 L.Ed. 1093 [1102, 1103]; Senn v. Tile Layers [Protective] Union, 301 U.S. 468, 479-481, 57 S.Ct. 857, 862-863, 81 L.Ed. 1229 [1236-1238]. See also, International Brotherhood of Electrical Workers v. National Labor Relations Board, 341 U.S. 694, 705, 71 S.Ct. 954, 960, 95 L.Ed. 1299 [1307]." Justice Black dissented, but without an opinion. Justice Douglas was of the opinion that, if the purpose of the picketing was to deprive nonunion men of employment, it would be unlawful; but that if it was to keep men away from the job, it would have constitutional protection. He did not think that the record disclosed with certainty the purpose of the picketing and that it should be reversed for ascertainment.

Pappas v. Stacey, 151 Me. 36, 116 A.2d 497 (1955), a case from the Supreme Judicial Court of Maine, involved picketing solely for organizational purposes. The plaintiffs operated a restaurant, employing on an average of thirty persons. The defendants, officials of Local 390 of a nationwide union, and three employees, who were members of that union, conducted peaceful picketing at the place of business for the sole purpose of seeking to organize other employees of the plaintiff in order to gain collective bargaining rights. The plaintiff was suffering and would continue to suffer damages, which would be irreparable. The question before the court was whether the law of Maine prohibited peaceful picketing for organizational

purposes under the circumstances; and if so, whether such picketing was protected under the "free speech" provision of the Federal Constitution.

The opinion pointed out that, by a statute enacted in 1941, Chap. 292, an employee or worker is protected from "interference, restraint or coercion by their employers or other persons"; that the worker must be left free from interference as to whether he will join or refrain from joining a union; and that pressure could not be directed against the employer to force him to interfere in the free choice of his employees. But such a situation was exactly what this picketing amounted to. Consequently, it was unlawful.

On the question as to whether this would constitute an abridgement of free speech, the opinion cited, by way of limitation of the doctrine in the Thornhill case, supra, Annotations in 94 L.Ed. 976, 977, and cases cited in Building Service Employees International, Local 262 v. Gazzam, 339 U.S. 532, 94 L.Ed. 1045, 70 S.Ct. 784 (1950), particularly calling attention to the fact that, in the Gazzam case, it was held that a state may, without abridging the right of free speech, restrain picketing for a purpose unlawful under its laws and policies, even though a statute expressing such policy has no criminal sanctions.

Consequently it was held that the trial court correctly enjoined the picketing in this case and affirmed such action.

On appeal of this case to the Supreme Court of the United States, 350 U.S. 870, 76 S.Ct. 117, 100 L.Ed. 770,

the motion to dismiss was granted and the appeal was dismissed, with the notation that Justices Black and Douglas would note probable jurisdiction.

In International Brotherhood of Teamsters, etc. v. Vogt, 354 U.S. 284, 1 L.Ed. 2d 1347, 77 S.Ct. 1166 (1957), the trial court did not find from the mere affidavits, no oral evidence at all being taken, that the purpose of the picketing was to coerce, intimidate and induce the employer to force, compel, or induce its employees to become members of the labor unions; but it did grant an injunction because a Wisconsin Statute prohibited picketing in the absence of a "labor dispute." On appeal, the Wisconsin Supreme Court at first reversed; but, subsequently, on reargument, since the facts were undisputed, it drew the inference and made such a finding, and that it was an unfair labor practice under Wis.Stat., Sec. 111.06(2) (b). The opinion relied on the Gazzam case and Papaps v. Stacey, supra.

On appeal, the Supreme Court of the United States in an opinion by Justice Frankfurter, expressing the views of five members of the Court, affirmed the decision of the State court. The opinion collated many of the cases, subsequent to the Thornhill case, supra, which reassessed the broad implications of that case and held that injunctions may be properly issued against peaceful picketing in the course of a labor controversy when such picketing is counter to valid state policy in the domain open to state regulations. Particularly named were the Giboney case, supra; Hughes v. Superior Court of California, supra; International Brotherhood of Teamsters, etc. v. Hanke, 339 U.S. 470, 94 L.Ed. 995, 70 S.Ct. 773, 13 A.L.R.2d 631; the Gaz-

zam case, supra; the Graham case, supra. The opinion, after analyzing these cases, observed that they "established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." Justice Douglas wrote a dissenting opinion, concurred in by Chief Justice Warren and Justice Black. While he did not say so, it is inescapable, from his words, that he did not think the affidavits sustained the finding of the Wisconsin Supreme Court. As a final statement in the ardor of his dissent, he said: "I would return to the test enunciated in Giboney—that this form of expression can be regulated or prohibited only to the extent that it forms an essential part of a course of conduct which the State can regulate or prohibit."

In the research of the present question, the Court has come across the case of Farnsworth & Chambers Co., Inc. v. Local Union 429, etc., 201 Tenn. 329, 299 S.W.2d 8, a case from the Supreme Court of Tennessee, involving the State's Right to Work Law, in which the issuance of an injunction by the trial court had been affirmed, and in which, on appeal to the Supreme Court of the United States, 353 U.S. 967, 77 S.Ct. 1056, 1 L.Ed. 2d 1133, the judgment of the Supreme Court of Tennessee was reversed on the authority of Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 75 S.Ct. 480, 99 L.Ed. 546; Garner v. Teamsters, etc. Union, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228. Another case with a like result is Curry v. Construction & Laborers Union, etc., 217 Ga. 512, 123 S.E.2d 653, where the judgment of the Supreme Court of Georgia, on appeal to the Supreme Court of the United States, Local No. 438,

etc. v. Curry, 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514, (1963), was reversed.

The Tennessee case was heard on bill and answer thereto. According to the allegations of the bill, a representative of the labor union protested to the complainant that it was not hiring union labor and threatened to picket the plant if union laborers were not employed; that the complainant refused to employ union labor; and that picketing resulted. Obviously the demurrer admitted the truthfulness of the allegations of the bill. It can be readily seen that the arbitrary refusal to employ any union labor would constitute discrimination against such labor, and the most sanguine advocate of a right to work law should not expect to rest securely on such an unstable foundation.

In the Georgia case, Curry & Company had a contract with the City of Atlanta for the construction of certain improvements to the city's sewage disposal facilities in which it was provided that "Wages will conform with those being paid on similar types of work in the Atlanta area." There was a dispute as to how this controversy arose. According to the affidavit of complainant, Curry, when he told the union representatives that he would not use union members exclusively because his company was operating on an "open shop" basis, the threat was made that they "would use every means at their command to see that we did use union workmen on our project." On the other hand, the unions recalled their requests for the complainants to raise their pay scales to those prevailing in the area. The complainants maintained, as the basis of their suit, that the unions had violated the State's Right to Work Statute. Conversely, the unions said that their sole purpose

in picketing was to publicize the facts about the wages being actually paid, and show that the matter was within the exclusive jurisdiction of the National Labor Relations Board. The trial judge refused to grant an injunction. On appeal, the Supreme Court of Georgia, while finding that the picketing was peaceful and that the evidence was sufficient to sustain a finding that the complainants were not paying wages conforming with those paid on similar types of work in the City of Atlanta, nevertheless it concluded, on the whole record, that the picket was placed on the job for the purpose of forcing the employer "to employ only union labor, or be unable to comply with the terms of his contract * * * such picketing is for an unlawful purpose, and clearly a violation of the provisions of Code (Ann. Supp.) § 54-804 * * * ". The Supreme Court of the United States said: "The allegations of the complaint, as well as the findings of the Georgia Supreme Court, made out at least an arguable violation of § 8(b) of the National Labor Relations Act, 29 U.S.C. § 158(b)", and reversed the cause.

These two cases appear to be wholly unimportant insofar as the cause now being dealt with is concerned. They have been mentioned for the purpose of demonstrating that, although of recent announcement, they apparently in no way impair the validity of State Right to Work statutes designed by the sovereign state to prevent picketing when the object of even peaceful picketing is for an illegal purpose and in violation of the public policy of the State.

[5] It is clear that Giboney established the principle that, if the purpose of even peaceful picketing is to attain an object which is in violation of the public policy of a

State, it may be restrained by the State. The Court was unanimous. In Hughes v. Superior Court of California, supra, while there was no dissent and Justice Douglas did not participate, Justices Black, Minton and Reed emphasized the correctness of the decision in the Giboney case by concurring on the ground that the principles of that case were controlling in Hughes. In the Gazzam case, supra, Justice Douglas did not participate, nor was there a dissent. Giboney was one of the principal authorities relied on for afirmance, and Justice Black stated that he was of the opinion that the case was controlled by the principles in Giboney. In Local Union No. 10 etc., A. F. L. v. Graham, supra, seven members of the Court affirmed. Justice Black dissented, but filed no opinion. Justice Douglas, in his dissent, thought the findings should have been more specific whether the purpose of the picketing was to deprive nonunion men of employment, which would make the picketing unlawful (the governing principle of Giboney) or to keep union men away from the job, which had constitutional protection. In Vogt, supra, while there was a dissent by Justices Douglas, Black and Warren, they were contending that the majority opinion was a departure from Giboney, and were calling for a return to it. Unquestionably Giboney is a landmark in pointing out the definite boundaries between State and Federal authority and power in this field.

The people of Mississippi, by their chosen representatives, the Legislature, in a general effort to afford to its citizens and residents freedom of choice in employment, whether as union or nonunion members, such membership or nonmembership not being a condition precedent to em-

ployment, and to prevent any agreement or combination between an employer and any organization or union whereby a labor monopoly would be set up, enacted Chap. 249 of the Laws of 1954, supra. Not content with a mere legislative act, the people subsequently demanded that this right to work should be written into their Constitution. As heretofore stated, the issue was submitted as an amendment, received an overwhelming majority of approval, was written into the Constitution, and is now a part of the basic constitutional law of the State. In addition, its validity has been approved by this Court. In other words, the high policy of the State has been fixed by the people themselves. They did not include criminal sanctions, but such is not necessary. Building Service E. I. U. v. Gazzam, supra; International Brotherhood of Teamsters, etc. v. Vogt, supra.

In spite of this high policy of the State, the appellants, according to this record, flaunted the high policy of the State by seeking to obtain a contract from Broome for a labor monopoly over his workers, and, when Broome refused to enter such conspiracy, they placed pickets at the scene of the work in an effort to bring him to his knees and force him and his employees to surrender to their demands. Undoubtedly, Giboney is a complete answer to the contention that the State courts do not have jurisdiction of this cause.

From what has been said, it follows that this cause must be, and it is, affirmed.

Affirmed.

All Justices concur.

APPENDIX E

IN THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

DECEMBER TERM, A. D., 1961

No. 21,128

J. D. BROOME, DOING BUSINESS AS BROOME CONTRACTING AND MAINTENANCE COMPANY, ET AL.,

Complainants,

versus

HATTIESBURG BUILDING AND TRADES COUNCIL, ET AL.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court has carefully considered and weighed the testimony of all witnesses and all exhibits and other evidence and has observed the demeanor of all witnesses while testifying, and, on the record as a whole, makes the following special findings of fact and conclusions of law:

Findings of Fact

1. The defendants pleaded in their answer, as affirmative defenses, and sought on the trial to prove, that

the complainant, J. D. Broome, was engaged in interstate commerce or in business activities which affected interstate commerce, and that the matters involved herein constituted a labor dispute solely within the jurisdiction of the National Labor Relations Board and, consequently, that this court is without jurisdiction. However, the court finds from a careful consideration of the whole record that the evidence does not prove that J. D. Broome is now or ever has been engaged in interstate commerce, or in business activities which affect interstate commerce, or that any person, firm or corporation with whom J. D. Broome has done or is doing business is currently engaged in interstate commerce or in business activities which affect interstate commerce, or that the matters here involved affect interstate commerce. The evidence fails to show the existence of the facts or circumstances which are necessary for the National Labor Relations Board to assert jurisdiction. On the contrary, it appears that J. D. Broome's business activities are of a purely local, intrastate nature. Neither the National Labor Relations Board nor any other agency, board or court of the United States has jurisdiction of this matter. This court does have jurisdiction.

2. A few of J. D. Broome's employees belong to labor unions, but most of his employees do not. These nonunion employees of Broome do not want to belong to labor unions and particularly do not wish to belong to any of the defendant unions. They wish to be left alone by the defendants, and desire to be free from interference and coercion by the defendants. Complainant Broome has followed and now follows a strict policy of not requiring either membership or nonmembership in labor unions by his employees

and of avoiding any interference whatsoever with the freedom of choice of his employees in this regard, and he has consistently and frequently advised his employees that membership or nonmembership in any labor union was a matter for their own personal free choice.

3. No dispute, controversy or grievance of any kind exists between J. D. Broome, on the one hand, and any of his employees, on the other hand, relating to wages, hours of work, working conditions, or any other matter relating to employment, or otherwise.

4. The defendant labor unions and their respective representatives demanded that the complainant, J. D. Broome, enter into agreements with them which in actual operation, practice and effect would require that Broome employ only members of labor unions; that he employ all of his employees from and through the business agents of the defendant labor unions and that he give said labor unions an employment monopoly with reference to employees of Broome; that he force and coerce his nonunion employees to join the defendant unions against their wishes; that he discharge nonunion employees; and that he otherwise interfere with his employees' right of free choice with respect to membership or nonmembership in labor unions.

5. The defendants and each of them did unlawfully conspire to place picket line at entrances to places where the complainant, J. D. Broome, was performing work and to injure the business of the complainant Broome and to injure and interfere with the rights of the complainants and other employees of Broome and did act in concert with

each other, individually and collectively, and as representatives of their respective unions, for the unlawful purposes set forth in these findings.

6. In furtherance of the conspiracy and as a result thereof, picket lines were placed by defendants on all plant entrances to Pontiac Eastern Corporation's Black Creek Refinery in Lamar County, Mississippi, where Broome was then performing some work, on October 6, 1961, and as an immediate and direct result, work at the refinery came to a virtual standstill, causing great loss and damage, and said pickets remained until removed by the temporary injunction issued herein on October 6, 1961. Said pickets would have remained and continued picketing at said locations, and elsewhere, except for the issuance of said temporary injunction. Although several defendants testified that their purpose in picketing was to advertise to the general public that they had some dispute with Broome, it is obvious from the evidence, and the court so finds, that in truth the real purpose of the aforesaid picketing was to bring pressure to bear on the complainant, J. D. Broome, to force Broome in turn to coerce his employees into joining labor unions against their will, and to force Broome to submit to the demands of the defendants, which are more particularly set forth above. The defendants will resume such picketing for such purposes, unless the temporary injunction is made final.

7. The record suggests that before October 6, 1961, the complainant Broome received from persons who would not identify themselves threats of violence and of sabotage to his equipment unless he "got right with the unions" and that they would "get him at Pontiac" if he did not

"get right with the unions." Further, the record shows that the business agent of one of the defendant unions threatened that Broome must "get right" with the union or "get out of business" and that, if he did not, the unions would "get him —one way or another." Also, in a meeting of the defendant, Hattiesburg Building and Trades Council, which Broome attended upon request, it was stated to him that the unions had "allowed" Broome to grow and now it was time for him to "get right" with the unions and that he should "influence" his employees to "get right" also. Picketing directed at Broome at the Pontiac refinery began less than two weeks later at a crucial and critical stage of the work then in progress.

8 The unlawful action of the defendants, as reflected by these findings, has caused complainants to suffer substantial and irreparable injury and damage and, unless permanently enjoined, will cause complainants to suffer further substantial and irreparable injury and damage, possibly resulting in the loss or destruction of Broome's business and the loss of employment of the other complainants and other employees of Broome.

9 The chancellor of this court was out of the State of Mississippi on October 6, 1961, when the bill of complaint for injunction was filed and the temporary injunction issued and was so out of the state for approximately two weeks thereafter. The Judge of the Circuit Court of Lamar County, Mississippi issued the temporary injunction for good cause shown in the absence of the chancellor of this court.

Conclusions of Law

1. This court has jurisdiction of the subject matter and of the parties herein.

2. Neither the National Labor Relations Board nor any other agency, board or court of the United States has jurisdiction of the matters involved in this cause.

3. The defendants' motion to dissolve the injunction is not well taken and should be overruled.

4. The defendants' affirmative defenses, set out in their answer as first defense, second defense, third defense, fourth defense, and fifth defense, are not well taken and should be overruled and dismissed.

5. The temporary injunction issued herein on October 6, 1961, was properly and legally issued.

6. It is the public policy of the State of Mississippi that the right of a person to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization and that any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby which membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is an illegal combination or conspiracy and is against such public policy.

7. The actions and activities of the defendants were for unlawful purposes, contrary to the public policy, statutes and Constitution of the State of Mississippi, and in violation of the rights of the complainants.

8. Complainants have no adequate remedy at law and, unless defendants are restrained and enjoined from further continuation of said unlawful action and activities, complainants will suffer substantial and irreparable injury and damage.

9. The complainants are entitled to the relief prayed for in the bill of complaint and the temporary injunction should be made permanent.

10. These conclusions of law are supported by the following authorities, among others: Miss. Const. art. 7, § 198-A; 29 U.S.C.A. § 164(b) and (c); *Local Union No. 10, United Association, etc. v. Graham*, 345 U.S. 192, 97 L.Ed. 946, 73 Sup.Ct. 585 (1952); *International Brotherhood of Teamsters, Local 695, v. Vogt, Inc.*, 354 U.S. 284, 1 L.Ed. 2d 1347, 77 Sup.Ct. 1166 (1957); and *Pappas v. Stacey*, 151 Me. 36, 116 A. 2d 497.

Complainants may submit a decree in accordance with the foregoing findings of fact and conclusions of law.

So FOUND, ORDERED, ADJUDGED and DECREED on this day of December, A. D., 1961.

Chancellor

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IN THE

Supreme Court of The United States

October Term, 1963

No. 669

HATTIESBURG BUILDING AND TRADES COUNCIL, et al.,

Petitioners,

versus

J. D. BROOME, doing business as Broome Construction and Maintenance Company, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents oppose the petition for a writ of certiorari filed herein, and respectfully pray that the petition be denied.

QUESTION PRESENTED

The petitioners incorrectly state the question presented. They assume facts [i.e., that the employer was engaged in interstate commerce or a business affecting interstate com-

merce] which are not reflected by the record. Correctly viewed, the question presented is:

> Does the doctrine of federal pre-emption prohibit a state court from enforcing its right-to-work law by enjoining unlawful picketing of an employer over whom it has not been shown the National Labor Relations Board would assert jurisdiction?

STATUTES INVOLVED

The applicable provisions of the National Labor Relations Act, sections 14(b) and (c), 61 Stat. 151 (1947), 73 Stat. 541 (1959), 29 U.S.C. § 164(b) and (c), are set forth in Appendix A, *infra*, p. 9. The Mississippi constitutional right-to-work law, Miss. Const. art. 7, § 198-A, is set forth in Appendix B, *infra*, p. 10.

STATEMENT

J. D. Broome was engaged in the industrial maintenance and small construction business in South Mississippi. Broome consistently followed a policy of not requiring either membership or nonmembership in labor unions by his employees and of avoiding any interference with their freedom of choice. Some of his employees were members of various labor unions but most of them, by personal choice, were not. (R. pp. 46, 338-339).

The evidence proved, and the trial court found, that petitioners demanded that Broome enter into some type of agreement whereby he would employ all of his workers through the business agents of these unions, that he grant

petitioners an employment monopoly in his business, that he employ only union members, that he put pressure upon and coerce his employees to join these unions, even against their will, and that he discharge any who failed to do so. Broome consistently refused to submit to these demands. (R. pp. 47, 339-344). Therefore, petitioners placed picket lines at places where Broome was performing work, including Pontiac Eastern Corporation's oil refinery in Lamar County, Mississippi, to force Broome to submit to their demands and, in turn, coerce his employees into joining these unions against their will or lose their jobs. (R. p. 48).

Broome and ten of his employees, respondents herein, filed a bill of complaint in the Chancery Court of Forrest County, Mississippi, for temporary and permanent injunctions against the petitioners herein, charging that their action was in violation of the constitution and public policy of the State of Mississippi, and in violation of the rights of the complainants and other employees of Broome similarly situated. (R. pp. 2-11). Petitioners filed a motion to dissolve the temporary injunction which was issued and an answer containing several affirmative defenses, including a plea to the jurisdiction based upon the doctrine of federal pre-emption by the National Labor Relations Act. In addition, the answer denied that the picketing was in violation of the Mississippi right-to-work law (R. pp. 32, 36-44). Hearing was held on the motion to dissolve, including the plea to the jurisdiction, and at the conclusion of all of the testimony presented by both sides, the parties agreed that the Court should decide the case finally, on the merits, on the testimony thus taken. (R. p. 423).

On the question of jurisdiction, the petitioners contended

that there was a labor dispute solely within the jurisdiction of the National Labor Relations Board and, therefore, the state court had no jurisdiction. They offered absolutely no evidence to show that J. D. Broome, against whom picketing was directed, was engaged in interstate commerce or in any business activities which affected interstate commerce, or that Broome did any business outside of Mississippi, or made purchases from outside the state, or did any business with any concern which itself was engaged in interstate commerce, or the volume of any business done by Broome whatsoever. Petitioners merely proved that Broome did *some* business with Pontiac, but the amount or volume thereof was not shown. Even with respect to Pontiac, petitioners' own evidence showed that all of its products were sold within the State of Mississippi (R. p. 67) and there was no probative evidence that any of its products left the state.

The Chancery Court, after hearing all of the evidence presented by both sides, including the testimony of twenty-three witnesses, made findings of fact and conclusions of law. With respect to its jurisdiction, the Court found:

> ". . . The evidence fails to show the existence of the facts or circumstances which are necessary for the National Labor Relations Board to assert jurisdiction. On the contrary, it appears that J. D. Broome's business activities are of a purely local, intrastate nature." (R. p. 46).

The Court further found that the picketing was for an unlawful purpose in violation of Mississippi's right-to-work constitutional provision and made the injunction permanent.

On appeal, the Mississippi Supreme Court affirmed, holding that the trial court's finding of facts was "manifestly right" and that "no other reasonable or rational conclusion could have been reached". 153 So. 2d at 703.

REASONS FOR NOT GRANTING THE WRIT

The State Court Had Jurisdiction: Congress Has Expressly Authorized State Courts to Act in Cases Where It Is Not Shown the N.L.R.B. Would Assert Jurisdiction.

This Court held in *Guss v. Utah Labor Relations Board*, 353 U.S. 1 (1957), that a state was precluded from acting in a labor dispute, even though the Board would decline to exercise jurisdiction because the employer's business did not meet one of the Board's jurisdictional standards. The Court noted the policy objections to existence of such a no man's land, subject to regulation by no agency or Court, adding: "Congress is free to change the situation at will." 353 U.S. at 11. Thereafter Congress amended the National Labor Relations Act in 1959 by adding subparagraph (c) to section 14. See Appendix A, *infra*. This amendment gave legislative sanction to the Board's use of jurisdictional standards and expressly permitted state courts to assume and assert jurisdiction over disputes over which the Board would not assert jurisdiction.

The Board's nonretail jurisdictional standard is $50,000 annually outflow or inflow, direct or indirect. For the purposes of applying this standard, direct outflow refers to goods shipped or services furnished by the employer outside the state. Indirect outflow refers to sales of goods or

services to users meeting any of the Board's jurisdictional standards *except the indirect outflow or indirect inflow standard.* Direct inflow refers to goods or services furnished directly to the employer from outside the state. Indirect inflow refers to purchase of goods or services which originate outside the employer's state. *Siemons Mailing Service*, 122 N.L.R.B. 81 (1958). The Board applies its nonretail standards to construction and maintenance contractors. *Myers & Camille Painters*, 131 NLRB 72.

The record here does not disclose that Broome was in any way directly engaged in interstate commerce and petitioners do not contend that he was. Rather, petitioners argue that Broome performed some services for Pontiac Eastern Corporation, which sold all of its products to Gulf Oil Corporation within the State of Mississippi, and that Gulf in turn shipped some of them out of the state; thus, Broome met the Board's nonretail standards because of *indirect outflow* consisting of services rendered to Pontiac. Respondents do not concede that there is any probative evidence in the record that any of Pontiac's products ever left the State of Mississippi; but even assuming that they did, the record does not disclose that the Board would assert jurisdiction over *Broome's* operations. His operations failed to meet the test in at least two particulars. First, there is no showing that the value of his services to Pontiac amounted to $50,000 annually. Second, Broome's services to Pontiac would not meet the Board's indirect outflow standard because indirect outflow refers to "sales of goods or services to users meeting any of the Board's jurisdictional standards *except the indirect outflow or indirect inflow standard.*" *Siemons Mailing Service, supra.* (Emphasis added). Thus it appears that the Board would not take jurisdiction over

Broome even if Gulf shipped in commerce some of the oil it purchased from Pontiac. This being so, the case falls within the scope of section 14 (c) (2) of the Act, 29 U.S.C. § 164 (c) (2), permitting state courts to assume and assert jurisdiction where the Board would decline to do so.

Local No. 438 v. Curry, 371 U.S. 542 (1963) and *Local Union No. 429 v. Farnsworth & Chambers Co.*, 353 U.S. 969 (1957), *reversing* 201 Tenn. 329, 299 S.W. 2d 8, are distinguishable from the case at bar. In *Curry* the parties stipulated that Curry's operations met the direct inflow standards of the Board. 371 U.S. at 545. In the *Farnsworth & Chambers* decision, the employer was a large international contractor and there was no question but that its operations were such as to meet the Board's jurisdictional standards.

The record here reflected that Broome's business activities were of a purely local, intrastate nature. It is undisputed that a state court may constitutionally enjoin peaceful picketing which is conducted for an unlawful purpose in violation of state law and state public policy. *International Brotherhood of Teamsters v. Vogt, Inc.*, 354 U.S. 284 (1957). The state court was clearly empowered by section 14 (c) (2) of the Act to enforce its right-to-work constitutional provision and to prohibit further violation thereof by the petitioners.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition herein should be denied.

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February 3, 1964

CERTIFICATE

I hereby certify that I have this day served by certified mail, postage prepaid, one copy of the above and foregoing Brief in Opposition to the Petition for Certiorari on each of the counsel for petitioners: Honorable Ralph N. Jackson, Jackson & Hess, 1310 Oil & Gas Building, New Orleans, Louisiana, and Honorable Knox W. Walker, Attorney at Law, Gulfport, Mississippi.

THIS 3d day of February, A. D., 1964.

Richard C. Keenan

APPENDIX A

The pertinent provisions of the National Labor Relations Act, Sections 14(b) and (c), 61 Stat. 151 (1947), 73 Stat. 541 (1959), 29 U.S.C. § 164 (b) and (c), are as follows:

> (b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.
>
> (c) (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.
>
> (2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to

paragraph (1) of this subsection, to assert jurisdiction.

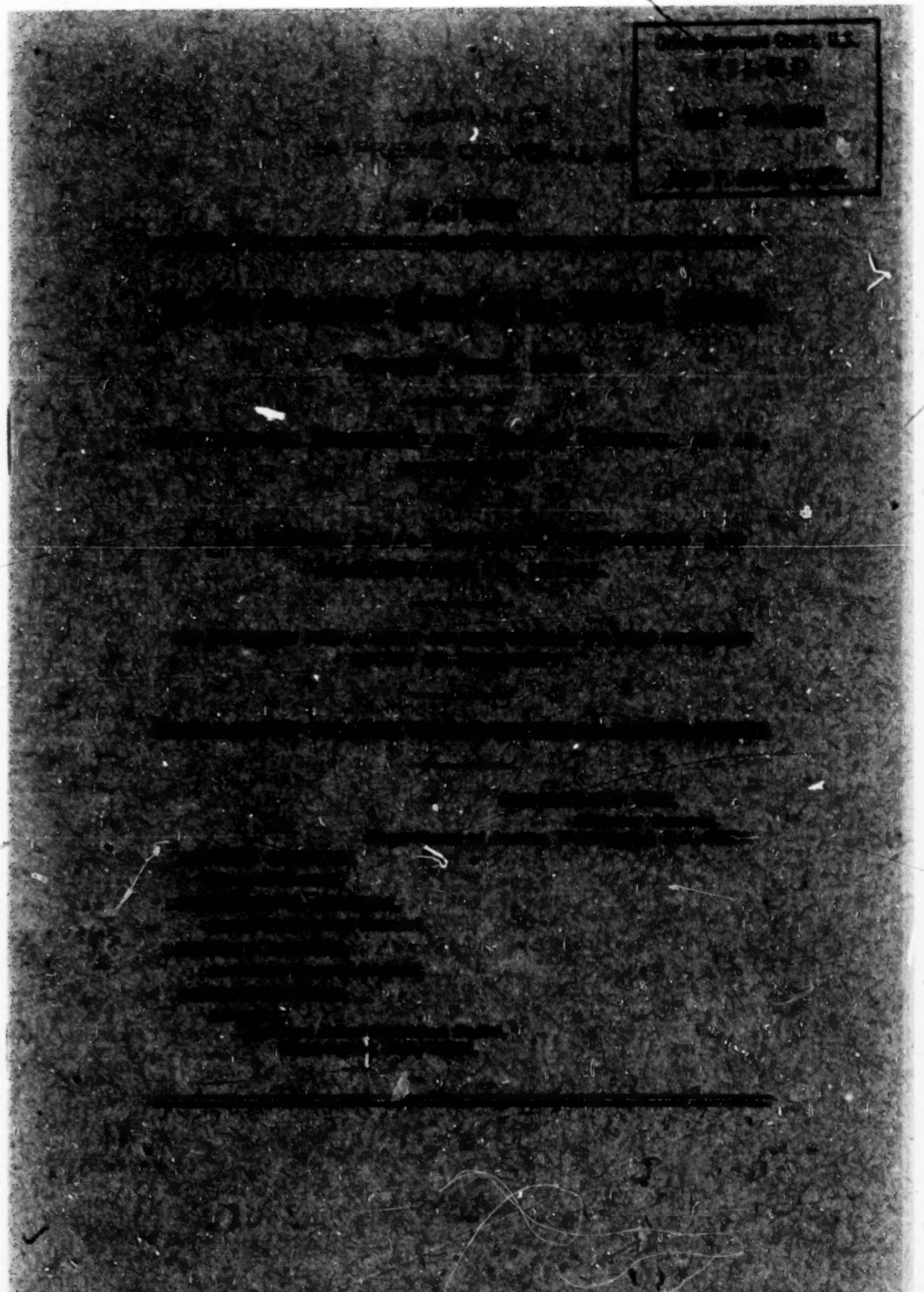
APPENDIX B

The Mississippi "right-to-work" law, adopted as a constitutional amendment in 1960, Miss. Const. art. 7, § 198-A, is as follows:

> Section 198-A. It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. No employer shall require any person, as a condi-

tion of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization. Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such actual damages as he may have sustained by reason of such denial or deprivation of employment.

The provisions of this section shall not apply to any lawful contract in force on the effective date of this section, but they shall apply to all contracts thereafter entered into and to any renewal or extension of an existing contract thereafter occurring. The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.



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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 669

HATTIESBURG BUILDING AND TRADES COUNCIL, ET AL., PETITIONERS

v.

J. D. BROOME D/B/A BROOME CONSTRUCTION AND MAINTENANCE CO., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

By order of the Court, dated February 17, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. The facts are stated in the petition for certiorari and in the opinion of the Supreme Court of Mississippi (Pet. 2–5, 23–31), and will be very briefly summarized here.

Petitioner is a labor organization which has been attempting to organize the employees of respondent ("Broome"), an industrial construction and maintenance firm in Hattiesburg, Mississippi (Pet. 24–25). Pontiac Eastern Corporation ("Pontiac") is engaged in the production of oil and gasoline products, and it

sells its entire production, which amounted in 1961 to more than 1.5 million barrels of refined oil and gasoline, to the Gulf Oil Corporation (R. 67, 211–212).[1]

On October 6, 1961, Broome and three other contracting firms were employed in construction and repair work at Pontiac's single refinery in Purvis, Mississippi (Pet. 23, 60). The west gate of the refinery then bore a sign reading, "Entrance for Broome Contracting and Maintenance Co. only, all others enter east gate." The east gate of the refinery bore a sign reading, "Broome Contracting and Maintenance Co. enter west gate, all others enter here" (Pet. 23). Petitioner instituted peaceful picketing at both gates to the refinery, with the pickets carrying signs which read, "J. D. Broome Const. Co., Unfair, Refuses to Bargain, No Contract, H.B.T.C., AFL–CIO" (Pet. 23). Of the 440 employees working at the refinery on October 6, 252 refused to cross the picket lines. Among these were the employees of the other contracting companies and more than half of Pontiac's employees (Pet. 23–24).

Broome and some of its employees obtained a permanent injunction from the Chancery Court of Forrest County, Mississippi, against petitioner's picketing (Pet. 22, 62–63). This injunction was issued on the following findings, *inter alia:* (1) that Broome was not engaged in activities affecting interstate commerce (Pet. 58); (2) that the purpose of the picketing was to obtain a closed-shop labor contract (Pet. 59); and (3) that such a contract would violate the right-to-work guarantee embodied in the public policy

[1] The testimony indicated that a minimum of 150,000 barrels were delivered per month.

and constitution of the State of Mississippi (Pet. 62–63). On appeal, the injunction was sustained by the Supreme Court of Mississippi (Pet. 19–56).

We believe that the decision of the Mississippi state courts is erroneous because those courts were without jurisdiction to deal with the activity involved in this case. In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244, this Court held that when "it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield." On the evidence in this case, it is reasonably clear (1) that petitioner's activity was within the jurisdiction of the National Labor Relations Board, and (2) that the Board, applying its own decisions and those of this Court, would find that petitioner had committed an unfair labor practice in violation of Section 8(b)(4)(B) of the National Labor Relations Act, as amended. Accordingly, the petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Mississippi reversed on the authority of the *Garmon* case. See *McMahon* v. *Milam Mfg. Co.*, 368 U.S. 7.

1. The Board's statutory jurisdiction extends under Section 10(a) to any unfair labor practice "affecting commerce" as that term is defined in Section 2(7). However, Section 14(c)(1) of the Act, added in 1959, permits the Board to "decline to assert jurisdiction over any labor dispute * * * where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the

exercise of its jurisdiction: *Provided,* That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." Section 14(c)(2), in turn, provides that, nothing "in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory * * * from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

Two principles observed by the Board are applicable to this case. First, the standard of discretionary jurisdiction applicable to an employer, other than a retail enterprise, is that the Board will take jurisdiction if the employer either (a) ships or furnishes at least $50,000 worth of goods or services outside the State or (b) supplies that volume of goods and services to another firm which is itself engaged in interstate commerce.[2] Second, where union activity alleged to involve a secondary boycott is involved, the Board's consistent practice is to take jurisdiction if the foregoing standard is satisfied either by the primary employer's activities or by the operations of the secondary employer at the site of the alleged secondary boycott, or a combination of these two.[3] The court below evidently overlooked the second principle, nor does petitioner cite it here.

---

[2] *Siemons Mailing Service*, 122 NLRB 81, 85.

[3] *Truck Drivers Local Union No. 649 (Jamestown Builders Exchange)*, 93 NLRB 386; *Teamsters, Local No. 554 (McAllister Transfer, Inc.)*, 110 NLRB 1769, 1771-1772; *Madison Building and Construction Trades Council*, 134 NLRB 517; *Highway Truck Drivers and Helpers Local 107 (D.L.W.*

The record in this case does not disclose Broome's effect on interstate commerce. It does indicate, however, that Pontiac, the secondary employer on whose premises the picketing occurred, sold more than 1.5 million barrels of oil and gasoline from this one refinery to Gulf Oil Corporation in 1961 (R. 21[7]), at a time when crude oil sold for $2.89 a barrel.[4] The value of the shipments to Gulf must therefore have been worth many times the jurisdictional amount ($50,000 annually). In addition, the record shows that the Board has actually exercised jurisdiction over Pontiac in the past—an election was conducted at the refinery in 1958 (R. 68).[5] Since Gulf is well-known to be widely engaged in interstate commerce, the jurisdictional standards applicable to secondary boycotts were satisfied.

2. It is also reasonably clear that petitioner's activities violated Section 8(b)(4)(B). The standards

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Transportation Co.), 145 NLRB No. 23. The Board's practice of taking into account the business of both the primary and the secondary employers in secondary boycott cases has received judicial appproval. See *National Labor Relations Board* v. *United Construction Workers*, 198 F. 2d 391 (C.A. 4); *National Labor Relations Board* v. *Associated Musicians, Local 802*, 226 F. 2d 900, 907 (C.A. 2), certiorari denied, 351 U.S. 962; *Schauffler* v. *Brewery and Beer Distributors, Local 830*, 162 F. Supp. 1, 8–9 (E.D. Pa.).

[4] United States Bureau of the Census, *Statistical Abstract of the United States: 1963* (Eighty-fourth edition), page 726, Table 1012.

[5] The Board's file in that case reflects a stipulation concerning Pontiac's operations in which it was agreed that Pontiac had made annual purchases of more than $800,000 from out-of-state and had shipped products in interstate commerce at an annual rate of more than $5,000,000 (NLRB Case No. 15–RC–1750).

by which the Board has determined the legality of picketing at premises where the employees of an "ambulatory" employer such as Broome are engaged are set out in *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547, and have been discussed by this Court in *Local 761, Electrical Workers v. National Labor Relations Board*, 366 U.S. 667, 676–679. Under these general criteria and other applicable decisions of the Board,[6] it is established that when, as here, a separate entrance has been set aside on the common site for the use of the primary employees, picketing at other entrances constitutes secondary activity in violation of Section 8(b)(4)(B). Hence petitioner's picketing at the east gate appears to be an unfair labor practice.[7]

3. The state court's finding that it was petitioner's purpose to obtain a closed-shop labor contract and that this purpose violated Mississippi's right-to-work policy did not bring petitioner's activity within the reach of state law. This aspect of the case was fully disposed

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[6] *United Association of Journeymen, etc. (Columbia-Southern Chemical Corp.)*, 110 NLRB 206, 208; *Retail Fruit & Vegetable Clerks (Crystal Palace Market)*, 116 NLRB 856, 860–861, enforced, 249 F. 2d 591 (C.A. 9); *International Association of Machinists (Freeman Construction Co.)*, 120 NLRB 753, 761–762.

[7] It should also be noted that this case demonstrates the soundness of applying *Garmon* so as to prohibit state court action even if the conduct involved is clearly prohibited by the National Labor Relations Act. For while petitioner's picketing at the east gate amounted to a violation of Section 8(b)(4)(B), the Board, unlike the Mississippi courts, might not have ordered that *all* picketing, including that limited to the west gate, be stopped. Hence the State's assumption of jurisdiction may have prevented lawful picketing.

of by this Court's recent observation in *Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 105:

> * * * picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain (*Local Union 429* v. *Farnsworth & Chambers Co.*, 353 U.S. 969, and *Local No. 438* v. *Curry*, 371 U.S. 542), because state power, recognized by § 14(b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b)*. Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under *Garmon*. [Emphasis in original.]

For the reasons stated we believe that the petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted.

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versus

J. D. BROOME, doing business as Broome Construction and Maintenance Company, et al.,

Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

On February 17, 1964, the Court invited the Solicitor General to file a brief expressing the views of the United States. The Solicitor General has filed such a brief. This supplemental brief is in reply thereto.

The Reasons Advanced by the Solicitor General as to Why the State Court Did Not Have Jurisdiction Should Be Disregarded

The Solicitor General argues that if a secondary boycott charge under Section 8(b) (4) (B) of the National Labor Relations Act had been filed the National Labor Relations Board would have probably asserted jurisdiction because

Pontiac Eastern Corporation was engaged in the production of goods for interstate commerce in sufficient quantities to meet the Board's jurisdictional standards. In his arguments concerning Pontiac Eastern's interstate activities the Solicitor General travelled outside of the record before the Court. The Solicitor General states that Gulf Oil Corporation is "well known to be widely engaged in interstate commerce. . . " . The Solicitor General ignored the fact that it was not shown on the record before the Court that any of the oil produced by Pontiac Eastern Corporation and sold to Gulf moved in interstate commerce. The Solicitor General refers to the stipulation in a Labor Board case involving Pontiac Eastern Corporation. The Solicitor General does not refer to any public record where this stipulation may be found. Moreover, even if the stipulation were a matter of public record, it could not be binding upon the parties to this dispute and is not a matter of record in this case. The Solicitor General recognized that petitioner did not urge the existence of Labor Board jurisdiction based upon Pontiac Eastern's interstate activities. Petitioner undoubtedly recognized that the record before the Court did not show such interstate activities.

We submit that the purported facts as to Pontiac Eastern's interstate activities, not of record before the Court, should not be considered by the Court.

A State May Properly Enjoin Picketing Conducted to Obtain An Agreement Made Unlawful by State Law.

Even assuming, arguendo, that jurisdiction of this controversy was not relinquished to the State by Section 14 (b) 2 of the Act, we respectfully submit that State Court action was authorized by Section 14(b) Appendix A, to our original brief. This section provides that nothing in the

Act shall be construed as authorizing the execution or application of agreement requiring membership in a labor organization as a condition of employment in any State in which such execution or application is prohibited by State law. Very recently this Court held that a State Court under Section 14(b) may invalidate and enjoin the enforcement of an agency shop contract found to be in violation of the Florida Right to Work Law. *Retail Clerks International Association v. Schermerhorn*, 11 L. ed. 2d 179 (1963). There, as here, the argument was made that although Florida's Right to Work Law was enforceable under Section 14(b) the State Courts of Florida were without jurisdiction to enforce it and the National Labor Relations Board afforded the only forum for relief. This argument was rejected by the Court.

> In light of the wording of Section 14(b) and its legislative history, we conclude that Congress in 1947 did not deprive the States of any and all power to enforce their laws restricting the execution and enforcement of union-security agreements. Since it is plain that Congress left the States free to legislate in that field, *we can only assume that it intended to leave unaffected the power to enforce those laws.* . . .
>
> * * * *
>
> . . . But Section 14(b) gives the States power to outlaw even a union-security agreement that passes muster by federal standards. Where Congress gives state policy that degree of overriding authority, *we are reluctant to conclude that it is nonetheless enforceable by the federal agency in Washington.* (11 L. ed. at 183-184, emphasis added).

This holding should put at rest the question now under discussion. However, the opinion in the *Retail Clerks* case also contains the following dictum, relied upon by the Solicitor General:

> On the other hand, picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union security statute lies exclusively in the federal domain (Local Union 429 v. Farnsworth & Chambers Co. . . . and Local Union #438 v. Curry . . .) because state power, recognized by Section 14(b) begins *only with actual negotiation and execution of the type of agreement described by Section 14(b)* . . . (11 L. ed. 2d at 185).

We respectfully submit that there is a basic inconsistency in the *Retail Clerks* case between the Court's *holding* on the one hand that Congress "intended to leave unaffected the power to enforce' state laws restricting union security agreements and the Court's *dictum* on the other hand that a State may not enjoin picketing which seeks to force an agreement in violation of such laws. The legislative history of Section 14(b) indicates that Congress did not intend to limit the States in the full enforcement of these laws, including injunction to prevent their violation.

The House Report states:

> It was never the intention of the National Labor Relations Act . . . to preempt the field in this regard so as to deprive the States of their *powers to prevent* compulsory unionism. (House Report No. 510, 80th Congress, First Session, page 60, emphasis added).

The equitable power to prevent threatened and impending law violation is often far more necessary to protect the rights of citizens than is the power to punish or award damages for past violation. Indeed in the case at bar the Court found that immediate and irreparable injury would result from the unlawful activity of the petitioner unless a temporary injunction were immediately granted. A construction of the Act which would tend to encourage law violation and to bar State Courts from preventing violations of State laws will cause incalculable harm and should be avoided.

The case of *Local #438 vs. Curry*, 371 U.S. 542, and *Local Union #429 v. Farnsworth & Chambers*, 353 U. S. 969, appear to be in conflict with the rationale of this Court's later opinion in *Retail Clerks International Association v. Schermerhorn*. Moreover, they appear to be at war with the philosophy and holding of a long series of decisions that a State Court may constitutionally enjoin peaceful picketing which is conducted for an unlawful purpose in violation of State laws and State public policies. *International Brotherhood of Teamsters v. Vogt, Inc.*, 354 U. S. 284, 1957. If this analysis of *Curry* and *Farnsworth & Chambers* decisions is correct then we respectfully submit that these decisions were erroneously decided and should now be overruled.

CONCLUSION

For the foregoing reasons, and for those set forth in our original brief we respectfully submit that the petition herein should be denied.

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April 13, 1964

CERTIFICATE

I hereby certify that I have this day served by certified mail, postage prepaid, one copy of the above and foregoing Supplemental Brief in Opposition to the Petition for Certiorari on each of the counsel for petitioner; Honorable Ralph N. Jackson, Jackson & Hess, 1310 Oil & Gas Building, New Orleans, Louisiana, and the Honorable Knox W. Walker, Attorney at Law, Gulfport, Mississippi, and upon The Solicitor General of the United States.

This 13th day of April, A. D., 1964.

/s/ Richard C. Keenan

Richard C. Keenan